

Remarks

As a result of this amendment, claims 6-9 have been cancelled, claims 1,4 and 5 have been amended. The specification has been amended to correct obvious typographical errors. No new matter has been entered into this application by way of amendment.

Objections

Applicants have amended the claims and specification with the correct spelling as suggested by the Examiner.

Rejections

Claims 1-6 have been rejected under 35 USC 112, first paragraph.

While not agreeing with the propriety of the rejection and solely to advance prosecution in the case, applicants have inserted into the claims 1, 4 and 5 XRPD data with the 10 strongest peaks which have support on pages 5 – 7 of the specification, as suggested by the Examiner. Applicants have also deleted the term “pure” from the claims.

Claims 1-6 have been rejected under 35 USC 112, second paragraph.

While not agreeing with the propriety of the rejection and solely to advance prosecution in the case, applicants have inserted into the claims 1, 4 and 5 XRPD data with the 10 strongest peaks which have support on pages 5 – 7 of the specification, as suggested by the Examiner. Applicants have also deleted the term “pure” from the claims.

Claim 1 has been rejected under 35 USC 102(b) as allegedly being anticipated by US 6,319,621.

Applicants have amended claim 1 to include the limitation of XRPD data with the 10 strongest peaks found on pages 5 – 7. Moreover, in the instant process, the product is crystallized from an alcohol, in contrast to crystallization disclosed in US 6,319,921 shown in examples 1 and 8 which teach water and ethanol for crystallizing, not ethanol alone:

60 water and brine and dried (MgSO_4). Removal of the volatiles in vacuo and purification of the residue with flash chromatography using ethyl acetate as the eluent and recrystallization of the solid with water and ethanol gave 1, m.p. 132~133° C.

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Claims 2-4, 6 have been rejected under 35 USC 103(a) as allegedly being unpatentable over US 6,319,621.

Applicants have amended claims 1 and 4 to include the limitation of XRPD data with the 10 strongest peaks found on pages 5 – 7. As mentioned above, in the instant process the product is crystallized from an alcohol, in contrast to crystallization disclosed in US 6,319,921 shown in examples 1 and 8 which teach water and ethanol for crystallizing, not ethanol alone.

Applicants contend that the Office has not established a prima facie case of obviousness as there is no teaching or suggestion in the art of record to crystallize the product compound with alcohol alone.

Respectfully submitted,

/Anthony P. Bottino/

Anthony P. Bottino
Attorney for Applicant(s)
Reg. No. 41,629

Patent Department
Boehringer Ingelheim Corp.
900 Ridgebury Road, P.O. Box 368
Ridgefield, CT 06877
Tel: (203) 791-6764